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wasn't wandering around aimlessly. He wasn't just drifting off into -- he was staying pretty much stagnant in his locations unless being instructed to move from one location to the other.

Q. Would you agree with me that placing him in the patrol car to do the PBT he would have been in a safe position than being left in front of the car?

A. I don't believe that was an option at that time because myself and Trooper Dennis both have an amount of gear, police-related equipment, that we carry in the back seat of the patrol car. There is a very good possibility there was no room for him to sit in the back seat at that time.

Q. Why would you have not removed the gear from the back of the car before going out on a call to investigate an accident or going to some sort of scene? Didn't it cross your mind there was a possibility an arrest might be made?

A. Yes.

Q. But you didn't take the time to

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clear out the back seat; is that correct?

A. Yes.

Q. Are you in the habit of having people that you arrest in the front seat with you and the other trooper?

A. No. Generally, after the arrest is made, then, we would rearrange our equipment, possibly placing some in the trunk or possibly moving it all onto the same side to make room for a passenger in the back seat.

Q. Why wouldn't that be done before going out on the call?

A. I leave it in a situation where it is accessible because I may need that during the call. Just because I am going to a location of a vehicle in a ditch, something of a higher priority could easily intervene and keep us from going to that location.

Q. What kind of equipment are we talking about?

A. Manuals, gloves, flashlights.

Q. Why would manuals be important?

MS. LYNCH FRIEDLINE: Let him finish the answer, please.

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MR. FEINSTEIN: I am sorry. I thought he was. I apologize.

Q. I am not trying to rush you.

A. The PBT would have been in the back seat because it doesn't work properly when it is cold, so being in the trunk could cause it to be unusable at the time.

Q. Why would manuals be important to be in the back seat?

A. A lot of my gear is in one bag so it is altogether. I don't have a book laying here (indicating) and a flashlight laying here (indicating). It is all in one bag.

Generally, I put it on the floor because in the course of our police duties, our driving maneuvers sometimes are abrupt and may cause things to fall off the seat. I have had my bag spill on occasion. Generally, I place it on the floor between the back seat and the front seat.

Q. I am sorry. We sort of got off on a tangent. You are walking toward the patrol car. You are slightly ahead of Mr. Bill. He is on your left. Tell me what happened.

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A. I stopped at the front of the patrol car. I am showing him this is where I want him to stand. I explain to him I am going to retrieve something from the vehicle. I will be back in a matter of a few seconds and just wait in this location.

I believe I am pointing at the area with my flashlight so he can see where he is supposed to be.

Then I begin to put my flashlight in a flashlight holder that is on my duty belt, and he just falls.

Q. Do you actually see him fall?

A. I don't remember seeing him fall at the time. I have seen him fall in the videotape.

Q. Do you know what caused him to fall?

A. No, sir.

Q. Did you see anything on the ground either before or after the accident, him falling, that he might have tripped or slipped on?

A. No, sir. In fact, I walked through the area myself on several occasions prior to that. I don't recall anything unusual about the roadway or the area around where he fell that would have been hazardous.

Q. Based upon your observations of Mr. Bill prior to the time of his accident, the time that he fell, in your estimation could Mr. Bill have been charged with public intoxication or, in other words, do you believe that he was a hazard to himself or others?

A. I don't know if I could have charged him for public intoxication because I believe the interior of the vehicle is not necessarily considered public.

Since I had removed him from that area, it would be unfair for me to take him from the vehicle, place him in public, and then arrest him for public intoxication.

Q. Let me rephrase my question. I am not asking whether he legally could be charged with public intoxication based upon the circumstances.

My question to you is do you believe at the time that you observed Mr. Bill was he a danger to himself?

MS. LYNCH FRIEDLINE: I will object to the form, but go ahead if you can answer.

My objection is you are mixing two different crimes. One is not at issue in the case, and that is fine if you want to make it an issue, but you are trying to ask him speculative questions about a guy that could have been charged with public intoxication under the circumstances he has said could not have been.

MR. FEINSTEIN: Let me respond to the objections. I understand your concerns, but I think you are missing the point because the question isn't whether he was guilty of public intoxication under the statute and the question isn't whether he was guilty of DUI. The question is what condition he was in at the time.

The trooper has given me a definition of what public intoxication is. I would like to know if in his estimation my client met that criteria because the trooper's obligations to my client are, in part, based

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upon the level of intoxication that my client had at the scene. It has nothing to do if he was guilty of either crime.

MS. LYNCH FRIEDLINE: I disagree. You can make your legal arguments. If you want him to speculate if he came across this guy without a car walking in the middle of the road and based on what he observed that was a public intoxication issue, but I think it is speculative.

MR. FEINSTEIN: That is okay. I will rephrase the question.

BY MR. FEINSTEIN:

Q. Based upon your observation and your training, when you saw or observed Mr. Bill on February 22, 2003, did you believe that he was a danger to himself or other people in the public?

A. In the condition that I saw him not driving, it is difficult to say because the actions that he were taking -- was taking -- pardon my grammar -- were primarily as a result of my direction, so I don't know in a different situation had he been on his own and I had just

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come across him what he would have been doing, what actions he would have taken to see if he would have endangered himself.

Was he intoxicated? I believe he was, but would he have been endangering himself? I don't know. I could have come across him on a park bench. He is not in danger. If I come across him walking on an interstate limited access highway, he is. I don't know if I can honestly --

Q. Let me follow up on that. Part of your understanding of the public intoxication statute deals with the activity that the person is engaged in at the time that he is observed?

A. I am sorry. Could you say that again?

Q. Is part of your understanding of the public intoxication statute dependent upon the activity the person is engaged in at the time of the observation of the intoxicated behavior?

You gave me an example. I am going to use your example. One person who is sitting on a park bench and one person who is walking in the middle of the road, assuming they have the same level of intoxication, is one person guilty of public intoxication and the other person not?

A. Quite possibly, because if I see a person sitting on a park bench, I would have no reason to approach them to even determine what their level of intoxication is unless they are sitting there in a swimsuit and it is ten below zero or something, then, obviously; but unless they are doing something to attract my attention or my suspicion, without some cause, I probably wouldn't be approaching them anyway.

Q. What were the road conditions like on February 22, 2003?

A. They were wet, generally clear.

Q. Do you remember any icy conditions that night?

A. Not in that area.

Q. Do you recall the last time it had snowed prior to the time of February 22, 2003?

A. No, I don't.

Q. By the way, where was this arrest made?

A. You mean the road name?

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Q. What township was it in?

A. West Mead Township.

Q. Was this on a state highway?

MS. LYNCH FRIEDLINE: Are you referring to your report?

A. I believe it is a township road. I don't recall offhand without looking -- if I had a copy of the criminal complaint, it would have it on there. Tamarack Drive. They were both township roads. They were the intersection of township roads.

Q. Why would the state police be called out to the scene as opposed to the local police force?

A. West Mead Township did not have any local police on duty at that time.

Q. So your jurisdiction covers that as well?

A. We cover any area that is not policed.

Q. Have you ever heard of the state created danger doctrine?

A. I may have discussed it with somebody in reference to this case at some point. I don't remember specifically.

Q. What is your understanding of that?

A. I don't have any recollection of exactly what I discussed at this point.

Q. Before Mr. Bill fell on February 22, 2003, did it ever cross your mind that he could fall and hurt himself?

A. It crossed my mind, yes. It wasn't of any great concern at that time.

Q. Why wasn't it of any great concern?

A. I have seen people with apparent higher levels of intoxication that were more unstable on their feet and that hadn't fallen down.

I had never had anybody completely fall down without any attempts to catch themselves before. He hadn't shown me any indication that he was going to fall. He was unsure on his footing at times but nothing extraordinary.

Q. I believe you testified earlier that you did not physically escort Mr. Bill over to the patrol car; correct?

A. That is correct.

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Q. Is there any reason why you didn't physically escort him over?

A. Yes, actually, there is. For one, I didn't feel there was a need at the time; and, two, if I am escorting him around, the validity of the videotape attempting to show if I am going to use that as prosecutorial evidence is greatly diminished.

If I am holding him, I could be influencing him whether I am holding him up or possibly pulling him trying to make him look like he stumbled or something. It removes the evidentiary value of the videotape.

Q. At some point prior to his falling, did you ask Mr. Bill for permission to do a blood test?

A. No, sir.

Q. Do you know if a blood test was done?

A. Yes, there was.

Q. Was that with his consent or without his consent?

A. That was with his consent.

Q. When was his consent obtained?

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A. May I refer to my report?

Q. Absolutely.

A. I read him some warnings at approximately 7:20. After reading those warnings, I asked him for consent, which he granted. At approximately 7:35 a blood sample was drawn in my presence.

Q. That was after he fell?

A. Yes, sir.

Q. Do you have a routine as to whether you ask an individual for permission to do a blood test?

A. I don't know if it is a routine so much. It would be after the completion of all the sobriety tests, whatever observations were going to be made, and after they have been placed under arrest.

Q. That is including the PBT?

A. Yes, sir.

Q. Is it your belief that you need a PBT in order to get a proximate cause to ask for the blood test?

A. It is not needed. It is just another step in the testing to obtain more probable cause.

In this case I had very limited psychomotor testing with the one leg stand and the walk and turn, so it was just one more thing I could use in case of a suppression hearing or possibly if a refusal trial would result or something along those lines. There is another piece of evidence.

Q. So you didn't feel that you had probable cause to arrest for DUI without a PBT in light of all of the circumstances that appear on this test report?

A. As I stated before, I don't make that decision until I have completed all the tests I am going to do. I hadn't done that.

I asked him to do the PBT and he refused. At that point I would have made my decisions based on what I saw there; and from knowing what I know today and reviewing, having a chance to review that, then, I would have felt that I did have probable cause, but I was still in the process of doing my tests to obtain all the probable cause that I am trained to obtain.

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Q. Trooper, have you ever gone to court to testify in DUI cases?

A. Yes.

Q. Have you gone to court to testify in DUI cases where there was no PBT done?

A. Yes.

Q. Have you gone to court in circumstances where there was no blood test done, where there was a refusal?

A. Yes.

Q. Have you gotten convictions under those circumstances?

A. Sometimes, yes.

Q. Is it still your testimony in light of the fact that based upon personal observations alone you were capable of getting convictions in DUI cases that you still needed the PBT test in order to get probable cause to arrest?

A. I didn't say I need. I am trained to use all the tests I have been trained to use. I want to use all the tests that I have.

I want to make the fairest and most accurate decision based on everything possible before I take someone into custody, place them under arrest.

I was just in the process of doing the standard tests available to me at that time when they become abruptly terminated and I could not complete them.

If I did not have the PBT test, I would have felt I could continue the case without it; but since I had it, I decided that I should use it.

Q. I don't want to put words in your mouth. Is it fair for me to say that you felt it was more important to obtain the PBT test than to place Mr. Bill into the patrol car into a position of safety?

MS. LYNCH FRIEDLINE: Object to the form. I mean, you are concluding position of safety and making conclusions about that. You are putting words in his mouth there.

MR. FEINSTEIN: He has already said placing him in the patrol car --

MS. LYNCH FRIEDLINE: Wait a minute. I should have objected to that because, again, that was your characterization of safety if you said it.

MR. FEINSTEIN: He already testified that placing Mr. Bill in the patrol car was a safer position than being in front of the patrol car; okay? This is just a follow-up question to that. I will rephrase it if you want.

MS. LYNCH FRIEDLINE: The record will be what it was. I don't know that Trooper Sternby heard that question either if that is how he answered it. I think you are putting words in his mouth.

MR. FEINSTEIN: I will ask the question again. Then I will ask a follow-up.

BY MR. FEINSTEIN:

Q. In your opinion, Trooper Sternby, would Mr. Bill have been in a safer position in front of the patrol car waiting for you to come back with the PBT or seated in the patrol car waiting for you to give him the --

MS. LYNCH FRIEDLINE: Again, I will object to the form. Safer than what?

MR. FEINSTEIN: One is safer than the other, Mary. I want to know what his opinion is.

MS. LYNCH FRIEDLINE: It is in hindsight because he fell. He could have fallen going to the car.

MR. FEINSTEIN: It is from an objective standpoint.

MS. LYNCH FRIEDLINE: We disagree.

MR. FEINSTEIN: One is a safer position than the other. I want his opinion. If he tells me it is safer for the person to be outside the patrol car, then, that is his opinion.

I am asking his opinion is it safer to be in front of the patrol car waiting for the PBT or in the patrol car waiting for the PBT.

MS. LYNCH FRIEDLINE: I am objecting to the form because the safer is your conclusion and assumes facts not in evidence. He can answer it. It is an objection to the form.

MR. FEINSTEIN: That is fine.

BY MR. FEINSTEIN:

Q. I am asking for an opinion. Is the person safer in front of the patrol car or in the patrol car?

A. It depends on the circumstances. If he is standing in front of the patrol car and I have no reason to believe that he is in danger, which at that point I did not, and somebody comes and runs into the patrol car and it slides past him, it is safe.

If I put him in the patrol car and they run into the patrol car and he gets smashed up in the car, then, it would be safer for him to be in the front.

I don't know if I can narrow it down to say one is ultimately always safer than the other one.

I felt he would be safe at either location at that time. I didn't distinguish any significant difference between the two.

MR. FEINSTEIN: Can we up the videotape? We are going to watch the videotape for a while and discuss it.

(At this juncture, the videotape was played.)

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Q. What I would like to do, Trooper, is for you to -- I know it is about 15 minutes long or so. I would like you to watch the tape, and then I am going to ask you specific questions about it.

I just want to make sure you have seen the whole tape and are familiar with it. I know you have reviewed it before. It is going to take a little while, and I apologize. It is just for thoroughness.

MS. LYNCH FRIEDLINE: I need to move up. If you do, go ahead.

MR. FEINSTEIN: I will be loud enough for you to hear me.

MS. LYNCH FRIEDLINE: I don't have my glasses.

MR. FEINSTEIN: I am going to ask the videotape be marked as Exhibit No. 3. Exhibit No. 2 will be the Criminal Complaint.

(Sternby Exhibit Nos. 2 and 3 were marked for identification.)

BY MR. FEINSTEIN:

Q. Trooper, before we watch the entire tape, is this, in fact, the tape of Mr. Bill's

arrest on February 22, 2003?
A. Yes.
Q. The camera that is in the patrol car, does it work automatically? You just turn it on?
A. I believe it is set to come on when the recovery headlights come on. It can also be activated manually as well.
Q. Is that what you did in this case? You activated it manually?
A. I don't recall.
(At this juncture, Mr. Bill joined the deposition.)
Q. Now, Trooper, you have looked at the tape. We stopped it at a certain point immediately after the fall. Would you agree with that?
A. Yes, sir.
Q. You are confident that is the same tape that you created that night?
A. Yes.
Q. Based upon the clock that is on there, it doesn't appear if there were any cuts or edits in the tape. Would you agree with

that?

A. Yes.

Q. We are going to watch the tape again, and I am going to ask you specific questions about it.

Now, this is the blue pickup truck that is referred to in your report?

A. Yes.

Q. Who is the person here (indicating) on the right side of the screen?

A. John Dennis.

Q. And he is the trooper who was with you that night?

A. Yes.

Q. He is kind of occupied taking out the passenger?

A. Yes.

Q. What was the passengers's name?

A. Robert Joyce.

Q. Are you depicted on the left side of the screen?

A. Yes.

Q. And you are removing Mr. Bill from the truck; is that correct?

A. Yes.

Q. At any time in your observations of the truck, did you see any open bottles of liquor, alcohol, or beer inside the truck that would indicate there was consumption of alcohol in the truck?

A. Can I refer to my report?

Q. You may.

A. I have a notation made that I did not observe anything in the truck or in the surrounding area.

Q. Do you know if your partner made any observations or would that have been included in the same report?

A. I believe we discussed it. I don't recall for certain, but he didn't make a separate report or anything.

Q. The time on the videotape says 6:24:32. You appear to be talking to Mr. Bill. Do you have any recollection of what you are saying to him at this time?

A. I would have to estimate from normal protocol. I don't recall independently.

I would like to rephrase my last

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statement. Trooper Dennis did make a report, but it is not attached to this one. It is just one from Mr. Joyce himself. I don't have any knowledge of him observing any beverages.

Q. Based upon your normal protocol, what do you believe you are saying to Mr. Bill at that time?

A. I would be asking him or trying to ascertain when he got there, allowing he had been there, getting his driver's license, registration, insurance cards.

Q. Was he able to tell you how long he had been there?

A. I don't recall.

Q. According to the police report, this was a little bit before 6 a.m.; is that correct?

A. I believe we got the call -- I have noted in the report the time as being 5:45. It would have been an estimation.

Q. At 6:25:42 would you agree with me that the trooper, your partner, was obstructing our view of you and Mr. Bill?

A. Yes.

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Q. Now, let's pause that for a second. Let's rewind that. At the point of 6:25:48, you are leaving the truck. Do you know where you are going at that time?

A. I am going to the patrol car to reposition the camera.

Q. The 6:25 that we have been referring to, that is the time of day; is that correct?

A. Yes.

Q. Why were you repositioning the camera?

A. Because I was going to take him to an area where a field sobriety test could be attempted.

Q. Do you have any recollection of what is happening off camera while there is nothing in the camera's view?

A. I believe that is the time where we were trying to talk to Mr. Joyce when he was insisting that he was the driver and the owner of the truck and I was confronting him that the name on the registration wasn't his.

He was telling me it was a misprint or typographical error or something to that effect and just generally trying to --

Q. Do you have any recollection of what, if anything, Mr. Bill was doing at that time?

A. I don't know.

Q. It appeared when we last saw Mr. Bill he was standing next to Mr. Joyce leaning against the truck. Do you know if he left that area at all?

A. I don't believe he did.

Q. Can I assume the red light I see going across the board is from your patrol lights?

A. Yes.

Q. It is not a UFO or anything like that, red mysterious lights that are flashing?

A. No.

MS. LYNCH FRIEDLINE: That is Westmoreland County.

MR. FEINSTEIN: I see. I always get those two counties mixed up. This would not make a good one for television.

Q. A person just appeared on the right side of the screen and that was you; is that correct?

A. Yes.

Q. We just saw your partner walk across the screen?

A. Yes.

Q. This is at about 6:30. Are you talking to Mr. Bill at this time?

A. Yes.

Q. What do you with your flashlight?

A. I am illuminating the area where my feet are positioned trying to demonstrate to him the position I want him to stand in while I instruct him on the one leg stand test.

Q. At that time did it appear he was able to understand your instructions?

A. As far as I could tell, he seemed to be cognizant of what I was saying.

Q. The camera seems to go in and out of focus. Do you have any idea why?

A. The quality of the camera I believe when the windshield wipers go over it tries to focus on those and then it focuses back. It is an auto focus portion. Our newer cameras are better quality.

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Q. At 6:31:34 are you trying to demonstrate to Mr. Bill what he is supposed to be doing?

A. Yes. This would be the walk and turn test.

Q. In terms of the order that you do things, is the walk and turn test the first test you do or the second?

A. Generally, I do the one leg stand before the walk and turn.

Q. Did this depict any attempts at the one leg stand? Is that when you are previously showing your feet?

A. After I explained that to him, he informed me he did not wish to attempt that test.

Q. Did he give you a reason?

A. I don't believe so.

Q. From the tape it would appear as if Mr. Bill was capable of performing this second sobriety test.

A. He never began the test, so I don't know if he was capable of performing it or not.

Q. In fact, on your report it says he

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couldn't follow the instructions.

A. That is correct.

Q. Do you know why or do you have an opinion as to why he couldn't follow the instructions? Was he being belligerent?

Actually, I will leave it as do you have an opinion as to why he couldn't follow the instructions?

A. He just didn't seem to understand. I would explain something to him, ask him to do something, and he just didn't seem to comprehend it.

Q. Did we miss the fall?

A. Yes.

Q. Is it fair to say from your report you did not attempt the third test because it says not applicable?

A. The horizontal nystagmus gaze test?

Q. Yes.

A. That is correct.

Q. Because of a refusal or because he couldn't follow instructions or do you have any recollection?

A. I don't know if I hadn't gotten to

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it or if I was going to do it later or just didn't do it. I don't recall exactly.

MS. LYNCH FRIEDLINE: You had asked that before, and that is the answer he gave you.

MR. FEINSTEIN: I had just forgotten.

MS. LYNCH FRIEDLINE: When I heard him say that, I realized --

A. I don't believe he refused it. I don't think I got to it for one reason or another.

Q. As you were walking towards the car, you did testify earlier that you were ahead and to the right. Is that you pointing out where you want him to stand?

A. That is correct.

Q. As I observed Mr. Bill walking towards the car, he appeared to be unstable. What was your estimation? Would you agree with that assessment?

A. In the initial portion when we were walking to the vehicle prior to me showing him where I wanted him to stand, he seemed to be pretty good.

Then as he stepped in front of me, it looked like he just lost his balance and fell to the ground, but up until this portion he seemed to be okay standing still.

Q. It appeared you did actually see Mr. Bill?

A. Yes, sir.

Q. How did Mr. Bill fall when he fell? Can you describe that for me?

A. I will read you what I wrote in my report. "He walked into the patrol car, stumbled, spun and fell to the ground." I don't recall him making any overt attempts to catch himself.

Q. What part of his body struck the ground?

A. I don't know for certain. I don't recall seeing him strike the ground.

Q. Okay. Did he lose consciousness?

A. Yes.

Q. Do you know how long he was unconscious for?

A. It was intermittent.

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Q. Did he regain consciousness before the ambulance arrived?

A. I am not certain.

Q. Who called the ambulance?

A. I did or I believe I just called the station and asked for them to dispatch an ambulance.

Q. Did you see any blood anywhere?

A. No, I didn't.

Q. You said it was intermittent. For my purposes was Mr. Bill coming in and out of consciousness?

A. Yes.

Q. Was he lucid at all before the ambulance came, if you can recall?

A. I don't remember.

Q. If we followed the tape through, you would have seen the ambulance come and eventually you and your partner left the scene. Where did you go from the scene?

A. To Meadville Medical Center.

Q. Now, when we were talking off the record a little bit, we talked about the fact that Mr. Joyce was arrested at the scene?

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A. Yes.

Q. I saw handcuffs being placed on him by your partner. Why was Mr. Joyce arrested at the scene?

A. Mr. Joyce indicated that he was driving and it was his vehicle and that Mr. Bill had only been a passenger.

Q. Was that inconsistent with the way you found the bodies situated, for lack of a better term, not dead bodies but the bodies situated inside the car?

A. It was inconsistent with the positions of the bodies in the vehicle and also the statements made by Mr. Bill.

Q. Did Mr. Bill admit to you he was driving the car?

A. He stated he was driving and it was his vehicle which was backed up by his insurance and registration cards. It was, in fact, his vehicle.

Q. I don't really care too much about Mr. Joyce, but you did find Mr. Bill behind the wheel of the car; is that correct?

A. He was in the driver's seat, yes.

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Q. Regardless of who actually drove the car into the ditch, is it fair to say that the person who was behind the wheel at the time that they are found is in control of the vehicle?

A. Generally.

Q. To your recollection was Mr. Joyce also intoxicated at the scene?

A. Yes.

Q. You went to the hospital, correct, you said?

A. Yes.

Q. At that time while you were in the hospital, you asked Mr. Bill to consent to having a blood test being done?

A. Yes.

Q. On your report, No. 42, O'Connell warnings given at 7:20, are the O'Connell if you don't give the consent to do the blood test your driver's license will be suspended for a year?

A. Yes.

Q. The consent was done at 7:20 according to this time. The warnings were given at 7:20. Do you know when he actually gave consent? I think you said 7:35 before.

A. The blood test was actually drawn at 7:35. He would have given consent after the O'Connell warnings were given and he acknowledged he understood them.

Q. That was approximately an hour after the events we saw on the tape; is that correct?

A. Approximately, yes.

Q. It is fair to say that you don't know the last time Mr. Bill consumed any alcohol prior to the time of your stopping and tapping on the window and waking him up?

A. I was never able to ascertain that.

Q. It is also fair to say that you don't know when the blood test was taken whether Mr. Bill's blood alcohol was continuing to go up or whether it had peaked or going down?

A. I only have my opinions, but I am not considered an expert on that, so I would have to say no.

Q. Well, for the purposes of the deposition, although you are not testifying as an expert, I will ask you what your opinion of that is and what your basis is.

A. It would be my opinion his blood alcohol would have been going down because we are talking in a period in excess of an hour from the time that he was first observed with no open containers or full containers or any containers of alcoholic beverage whatsoever in the area that we were able to observe.

Having a period of -- if we go by my estimate of 5:45 when the vehicle was first reported, you are talking a period of almost two hours. Any absorption of alcohol at that point should have long since taken place.

Q. The actual measured BAC was what in this case?

A. .25.

Q. That was taken at least two hours after the last consumption of alcohol?

A. As far as I can tell, yes.

Q. It is your opinion, is it, here today that, in all likelihood, Mr. Bill's BAC was higher than .25 at the time that you woke him up in the vehicle?

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A. That would be my nonexpert belief, yes.

Q. Mr. Bill was, in fact, charged with DUI; is that correct?

A. Yes.

Q. Do you know what the disposition of that was?

A. He was accepted into the ARD program.

Q. Was his record ultimately expunged?

A. Yes.

Q. In addition to DUI, what, if anything, was Mr. Bill charged with?

A. Can I look at the Complaint again?

MS. LYNCH FRIEDLINE: You marked that as an exhibit, didn't you?

MR. FEINSTEIN: Yes. That was marked as Sternby Exhibit No. 2.

A. Careless driving.

Q. Was that charge dropped when the ARD was accepted?

A. I don't believe so, but I am not absolutely positive at this point.

Q. Referring back to your report, on

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page 2 of the report, it refers to Defendant was approached and found to be difficult to wake. Can you tell me what you mean by "difficult to wake" or, I should say, "difficult to awake"?

A. It would have taken several seconds for him to regain consciousness. I had to tap on him. I don't recall.

Q. In your opinion as somebody who has made 200 arrests for DUIs, is that consistent with somebody who is heavily intoxicated?

A. It is a possible indicator, but that is not the only possible indicator.

Q. Page 3 of your report. "Sobriety tests were attempted unsuccessfully. The Defendant could not even understand the instructions."

You indicated that he refused to try the one leg stand on the front page of your report. Did you have any indication that Mr. Bill understood your instructions with regard to the one leg stand test?

A. I am not certain at this point.

Q. Your report continues, "The

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Defendant moved toward the patrol car as this trooper went to get a PBT. The Defendant walked into the patrol car, stumbled, spun and fell to the ground." Did he actually strike the patrol car before he fell?

A. I believe in the videotape he actually put his hand on the hood and attempted to catch his balance or something.

Q. You did say then he made no attempts to catch himself and landed head first. Your testimony today was that you don't recall whether you saw Mr. Bill's head strike the ground. Does this refresh your recollection as to whether you saw Mr. Bill's head strike the ground?

A. I don't recall seeing him strike the ground.

Q. The failure in your opinion, somebody who has had over 200 arrests for DUI -- I shouldn't say that. Poorly phrased.

MS. LYNCH FRIEDLINE: Let's clarify that.

Q. As somebody who has made over 200 arrests --

MS. LYNCH FRIEDLINE: Yes.

Q. -- or approximately 200 arrests for DUI, would difficulty in understanding instructions be an indication of heavy intoxication?

A. That would be one, yes.

Q. Would incoherent speech be an indication of heavy intoxication?

A. Yes.

Q. Would slurred speech be an indication of heavy intoxication?

A. Yes, sir.

Q. Would having bloodshot eyes be an indication of heavy intoxication?

A. Yes, sir.

Q. Would having a strong odor of alcohol on the breath be an indication of heavy intoxication?

A. Yes, sir.

Q. Would having unsure footing be an indication of heavy intoxication?

A. Yes, sir.

Q. Would swaying -- same question.

A. Yes.

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Q. Now, you indicated that no one of these factors by themselves would be conclusive of heavy intoxication; is that fair to say?

A. Yes.

Q. Combining those factors together, would you agree with me that even before you went to get the PBT there were indications of heavy intoxication?

MS. LYNCH FRIEDLINE: Objection. Asked and answered. Go ahead.

Q. You can answer.

MS. LYNCH FRIEDLINE: I am sorry.

A. Yes.

MR. FEINSTEIN: Trooper, I am done.

As I indicated before, I believe -- but I am not 100 percent sure -- there are outstanding discovery requests. I am reserving the right to recall Trooper Sternby in case there is something in response to the discovery requests that may require my additional questioning.

If I can, I will do it in the way of

interrogatories so I don't have to bring him down here again.

MS. LYNCH FRIEDLINE: As we said off the record, I am not aware of any. I could be wrong. If there are, we will certainly accommodate you and do what we have to do.

MR. FEINSTEIN: I was absolutely certain I had sent them to you until I couldn't find them in the file. I know I dictated a follow-up letter to say why haven't you answered them.

I don't know. My secretary has a habit of not sending out things necessarily when I think she is sending them out in any event. If you don't have them, you are going to get them.

MS. LYNCH FRIEDLINE: We will read it.

(Signature not waived.)

(Whereupon, the above-entitled matter was concluded at 1 p.m.)

COMMONWEALTH OF PENNSYLVANIA) ERRATA
COUNTY OF ALLEGHENY) SHEET

WILLIAM ROBERT BILL
vs.
TROOPER VICTOR J. STERNBY

I, VICTOR STERNBY, have read the foregoing pages of my deposition given on February 28, 2006, and wish to make the following, if any, amendments, additions, deletions or corrections:

Pg. No.	Line No.	Change and reason for change:
10	(19-22)	we had people thrown out at a point when they couldn't possibly be capable of receiving the minimum academic scores on the final regardless of how they did...
23	15	Not in a trial situation. I believe it is...
39	25	"Attempted to get A PBT and he fell"
64	8	the emergency lights come on
67	10	ascertain when he got there, how long he...
70	24	An auto focus function

In all other respects the transcript is true and correct.

[signature]
VICTOR STERNBY

Subscribed and sworn to before me this 29th day of March, 2006.

[signature]
Notary Public

NOTARIAL SEAL
YVONNE H KILBURN
Notary Public
VERNON TWP, CRAWFORD COUNTY
My Commission Expires Jul 25, 2009

(LH)

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

I, Linda D. Hughes, a notary public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, VICTOR STERNBY, was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness, all to the best of my skill and ability.

I further certify that the inspection, reading and signing of said deposition were not waived by counsel for the respective parties and by the witness and if after 30 days the transcript has not been signed by said witness that the witness received notification and has failed to respond and the deposition may then be used as though signed.

I further certify that I am not a relative, or employee of either counsel, and that I am in no way interested, directly or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 13th day of March 2006.

Linda D. Hughes
____

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda D. Hughes, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Jan. 25, 2010